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DTW Nov-08

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COPY MAILED  
NOV 25 2008

In re Application of :  
Jeffrey et al. : DECISION ON PETITION  
Application Number: 08/872,078 :  
Filing Date: 06/10/1997 :  
Attorney Docket Number: P/54265 :

This is a decision in reference to the "PETITION TO WITHDRAW  
HOLDING OF ABANDONMENT UNDER 37 C.F.R. § 1.181," filed on October  
3, 2008.

The petition is **DISMISSED**.

This application was held abandoned for failure to timely submit  
the issue fee in response to the Notice of Allowance and Issue  
Fee Due mailed on August 13, 2001, which set a two (2) month  
shortened period for reply. On May 6, 2002, Notice of  
Abandonment was mailed.

Petitioner asserts that the Notice of Allowance and Issue Fee Due  
was never received. Specifically, petitioner asserts that both  
the Notice of Allowance and Issue Fee Due and the Notice of  
Allowance were both mailed to an incorrect address.

A review of the record reveals the following:

1. On June 10, 1997, the application was filed as a File Wrapper  
Continuation Under Rule 1.62 of prior-filed application No.  
08/400,140, filed on March 6, 1995. The correspondence address  
listed in the transmittal letter is:

Kirschstein, Ottinger, Israel & Schiffmiller, P.C.  
551 Fifth Avenue  
New York NY 10176-0024

2. On August 13, 2001, the Notice of Allowance and Issue Fee Due  
was mailed to:

James Dean Johnson  
Jones 6 Askew  
191 Peachtree Street, NE  
37th Floor  
Atlanta GA 30303-1769

3. On May 6, 2002, the Notice of Abandonment was mailed to:

John S. Pratt, Esq.  
Kilpatrick Stockton, LLP  
1100 Peachtree Street  
Suite 2800  
Atlanta GA 30309

4. On August 7, 2008, a change of correspondence address was filed.

5. On October 3, 2008, the subject petition was filed.

It is noted that the file wrapper for the subject application lists the address to which the Notice of Allowance and Issue Fee Due was mailed as the correspondence address.

The petition must be dismissed at this time because the extended period between the filing of the application on June 10, 1997, the mailing of the Notice to Allowance and Issue Fee Due mailed on August 13, 2001, the Notice of Abandonment mailed On May 6, 2002, and the filing of the subject petition on October 3, 2008, obligates the Office to inquire into the reasons for the delay.

MPEP 203.08, states, in pertinent part that in the event that a six month period has elapsed, and no response from the Office is received, applicant should inquire as to the status of the application to avoid potential abandonment. A stamped postcard receipt for replies to Office actions, adequately and specifically identifying the papers filed, will be considered prima facie proof of receipt of such papers. See MPEP § 503. Where such proof indicates the timely filing of a reply, the submission of a copy of the postcard with a copy of the reply will ordinarily obviate the need for a petition to revive. Proof of receipt of a timely reply to a final action will obviate the need for a petition to revive only if the reply was in compliance with 37 CFR 1.113.

Accordingly, the Office is requesting additional information regarding the delay between the filing of the subject application on June 10, 1997, the mailing of the Notice of Allowance and

Issue Fee Due mailed on August 13, 2001, the mailing of the Notice of Abandonment on May 6, 2002, and the filing of the subject petition on October 3, 2008. Any renewed petition must be accompanied by affidavits or declarations of facts by all persons having first-hand knowledge of the circumstances surrounding the delay, setting forth the facts as they know them. Petitioner may also wish to submit any docket reports or other contemporaneous documentation which would establish a showing of diligence throughout the period described above.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. **This period may not be extended.**<sup>1</sup>

Further correspondence with respect to this matter should be addressed as follows:

By mail:                   Mail Stop Petition  
                            Commissioner for Patents  
                            P.O. Box 1450  
                            Alexandria, VA 22313-1450

By FAX:                   (571) 273-8300  
                            Attn: Office of Petitions

By hand:                  Customer Service Window  
                            Mail Stop Petition  
                            Randolph Building  
                            401 Dulany Street  
                            Alexandria, VA 2231a

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



Douglas I. Wood  
Senior Petitions Attorney  
Office of Petitions

Conferee: Anthony Knight, Supervisor

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<sup>1</sup> 37 CFR 1.181(f).